IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

OP.No. 9112 of 2001(I)

PETITIONER:

YOUNG WOMEN'S CHRISTIAN ASSOCIATION,
M.C.ROAD, KOTTAYAM, REPRESENTED BY ITS
GENERAL SECRETARY MRS. LATHA PHILIP.

BY ADV. SRI.JOHN RAMESH
SRI.K.I.JOHN

RESPONDENTS:
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1. **TAHSILDAR, KOTTAYAM.**

2. **THE SECRETARY,**
DEPARTMENT OF TAXES (H)
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.9112/2001 I

ORDER ON C.M.P.NO.14512/2001 IN O.P.NO.9112/2001 I

DISMISSED

10/04/2007 **SD/-K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE CERTIFICATE OF REGISTRATION DTD. 11/06/1958.**

EXT.P2: **COPY OF THE CONSTITUTION OF Y.M.C.A. KOTTAYAM DTD. 10/02/99.**

EXT.P3: **COPY OF NOTIFICATION DTD. 17/03/97.**

EXT.P4: **COPY OF REPORT.**

EXT.P5: **COPY OF NOTICE ISSUED BY THE RESPONDENT TO THE PETITIONER DTD. 23/12/92.**

EXT.P6: **COPY OF ORDER OF SANCTION OF THE CENTRAL GOVERNMENT DTD. 26/07/79.**

EXT.P7: **COPY OF ORDER DTD. 30/01/82.**

EXT.P7(A): **COPY OF WORKING WOMEN'S HOSTAL SCHEME.**

EXT.P8: **COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**

EXT.P9: **COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DTD. 6/11/2000.**

EXT.P10: **COPY OF JUDGMENT IN O.P.33193/2000 DTD.27/11/2000.**

EXT.P11: **COPY OF LETTER DTD. 21/03/2000.**

EXT.P12: **COPY OF LETTER DTD. 11/12/79 ISSUED BY THE GOVERNMENT OF INDIA TO THE PETITIONER.**

EXT.P13: **COPY OF LETTER SEND BY THE PETITIONER TO THE GOVERNMENT OF INDIA, MINISTRY OF SOCIAL WELFARE DTD. 20/03/84.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

O.P. NO. 9112 OF 2001-I

JUDGMENT

The petitioner is a charitable organisation registered under the provisions of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. It has constructed a hostel for working women. The Central Government have financed the construction of the hostel under a scheme promulgated by it. The financial assistance was rendered to the petitioner, subject to certain conditions regarding the income of the working women to be accommodated there and the rate of rent chargeable. The petitioner claimed exemption from levy of building tax for the said building, on the ground that it is used principally for charitable purposes. The claim of the petitioner was directed to be considered by the Government, by this Court. The Government considered the matter and rejected its claim by Ext.P11 communication. The relevant portion of the said judgment reads as follows:

> "The assessee was given an opportunity of being heard on 25.10.99. Government have examined the matter with reference to the records and the statements of the assessee. Government found that the building is used as a hostel building rented out to the working women. It is not a

> building used principally for religious, charitable or educational purpose. Hence the building in question is not eligible for exemption under Section 3(1)(b) of the Kerala Building Tax Act."

2. It is not in dispute that the building is let out to working women and rent is collected from them. But, the rent is moderate, according to the petitioner and therefore, the activity should be treated as a charitable activity. So, the petitioner claims exemption from payment of the building tax.

3. I heard the learned Government Pleader for the respondents also. Even if the organisation, which constructed the building is a charitable organisation or charitable trust, it will not qualify the building for exemption. The building should be put to use principally for religious, charitable or educational purposes or as factories or workshops. Under the scheme of the Central Government, so many working women's hostels are constructed in the State. They are buildings providing accommodation to working women at reasonable rate of rent. But, the said activity cannot be described as a charitable activity. It is an income generating activity, by giving the building on rent. The rent, though moderate, is collected and it is an income for the owner of the building. If it is described as a charitable activity, so many persons/organisations claiming to be rendering services at

moderate rates, can claim that they are also engaged in a charitable activity and therefore, their buildings should be granted exemption. Further, the user of the building is relevant more than the activities of its owner, to consider the eligibility of the building for exemption. This point is covered by the decision of this Court in **Medical Trust Hospital v. State of Kerala** [2004(2) KLT 139]. The said decision was affirmed by the Division Bench of this Court as well as the Apex Court. In view of the above position, the claim of the petitioner for exemption from payment of the building tax is repelled.

4. The learned counsel for the petitioner submitted that the petitioner's building is entitled to get the benefit of the provisions contained in Section 3A(2) of the Building Tax Act. But, no notification issued under the said Section was brought to my notice. So, the said claim also cannot be accepted. In the result, the Original Petition fails and it is dismissed.

10th April, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR,J.

O.P.NO.9112/2001-I

JUDGMENT

10.4.2007.